

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Hon. Blanche M. Manning
)	
CLARENCE CROSS, et al.)	99 CR 836
)	
Defendants.)	

MEMORANDUM AND ORDER

The Government indicted Defendants Clarence Cross, Norman “Randy” Williams, and Angelo Cassano in connection with a scheme to defraud Continental Casualty Company, a subsidiary of CNA Financial Corporation (hereafter, “CNA”). Defendant Cassano was charged with money laundering and tax-related charges. The present matter comes before the court on the Defendant Cassano’s Motion for Judgment of Acquittal.

BACKGROUND

The indictment alleges that Defendants Cross and Williams devised and participated in a scheme to defraud CNA, by fraudulently having CNA pay for printing and mailing services that were not rendered. Defendant Cross was the supervisor of outgoing mail for CNA and had the responsibility of processing invoices and check requests for outside contractors who performed mail services for CNA. The government alleges that Defendants created “shell” corporations which submitted fraudulent invoices to Cross for work that was not performed. Cross then allegedly, with the knowledge that the

invoices were fraudulent, caused CNA to mail checks (totaling \$3.7 million) to the “shell companies” created to defraud CNA.

The indictment further alleges that after receiving the fraudulently obtained checks, Defendant Cassano violated federal money laundering and currency reporting laws by structuring financial transactions to evade Internal Revenue Service reporting requirements.

After a four week trial, the jury convicted Defendants on all counts.

ANALYSIS OF DEFENDANT’S MOTION FOR JUDGMENT OF ACQUITTAL

Defendant Cassano contends that this Court should acquit him on the money laundering count (Count V) because: (1) pursuant to Federal Rule of Criminal Procedure 29(a), the evidence is insufficient to sustain a conviction on the money laundering count; and (2) the evidence offered at trial was materially different from that alleged in the indictment which constitutes a fatal variance. The Court will address each of these contentions in turn.

I. Sufficiency of Evidence

Under Federal Rule of Criminal Procedure 29(a), a court may acquit a defendant on “one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.”¹ When reviewing a motion

¹ The court may reserve decision on a motion of acquittal until after the jury returns a verdict. Fed. R. Crim. Proc. 29(b). However, the court must decide the motion on the basis of the evidence at the time the ruling was reserved. *Id.* Here, Defendant Cassano made the instant motion at the close of the Government’s case. Thus, the Court will decide this motion based on the evidence at that time.

for judgment of acquittal pursuant to Rule 29(c), the Seventh Circuit mandates that the district court determine:

whether at the time of the motion there was relevant evidence from which the jury could reasonably find [the defendants] guilty beyond a reasonable doubt, viewing the evidence in the light most favorable to the government ... bearing in mind that it is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences.

United States v. Reed, 875 F.2d 107, 111 (7th Cir.1989). In short, the court views all the evidence in the government's favor and is absolutely barred from second-guessing the jury's credibility determinations or findings of fact. Id. Instead, the court merely assesses the record to determine if all the admissible evidence supports the defendants' adjudication of guilt beyond a reasonable doubt. Id.

Here, Count V of the Superseding Indictment alleges that Defendant Cassano violated 18 U.S.C. §1956(a)(1) by conducting and attempting to conduct “financial transactions affecting interstate commerce, which transactions involved the proceeds of specified unlawful activity, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, source, ownership, and control of the proceeds of said specified unlawful activity.” This allegation follows the money laundering statute (section 1956(a)(1)) which provides that:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

18 U.S.C. § 1956(a)(1).

Defendant Cassano contends that this Court should dismiss Count V because the Government has failed to show, as required by section 1956(a)(1), that Cassano had any knowledge that the money from the financial transactions involved proceeds from a “specified unlawful activity,” which in this case is the mail fraud scheme carried out against CNA. According to Defendant Cassano, the only evidence that the Government introduced in its case-in-chief was that Cassano believed that the money came from an individual (William Reinhardt, who was actually an alias used by Co-Defendant William White, who pleaded guilty) who wanted to conceal assets from his wife in an ongoing divorce proceeding. Cassano contends because concealing money from a spouse in a divorce proceeding is not a criminal offense under Illinois law, he cannot be guilty because he did not know that the proceeds stemmed from a “specified unlawful activity.”²

In support of this contention, Defendant Cassano cites two cases – United States v. Polichemi, 219 F.3d 698 (7th Cir. 2000) and United States v. Marzano, 160 F.3d 399 (7th Cir. 1998). After a careful examination of these cases, this Court finds that these cases do not support Defendant

² The Illinois Criminal Code states that: “[w]here the property involved is that of the offender’s spouse, no prosecution may be maintained unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft.” 720 ILCS 5/16-4. The Committee Comments for Section 16-4 reveal that the Illinois legislature believed that “criminal law should not intrude into what usually is a civil fight over property, the true ownership of which is dubious at best.” 720 ILCS 5/16-4, Committee Comments.

Cassano's motion for acquittal. In Polichemi, 219 F.3d at 708, affirming a conviction for money laundering, the Seventh Circuit held that the district court did not err in giving the following instruction concerning the money laundering count: "the government must show that the defendant knew that the money involved in the financial transaction represented proceeds from some form, though not necessarily which form, of activity which constitutes a felony offense under state or federal law." The court noted that this instruction was appropriate because the defendant claimed "lack of guilty knowledge," and that the trial court also gave the jury an "ostrich instruction." Id.

Likewise, Marzano, 160 F.3d 399, does not support Defendant Cassano's argument. The defendant in Marzano was convicted of one count of money laundering pursuant to section 1956(a)(1)(B)(i). Although the defendant did not specifically appeal the issue, the Seventh Circuit noted that it did not matter which type of unlawful proceeds the defendant intended to launder as long as he knowingly laundered unlawful proceeds. Id. at 400.

Moreover, case law from this circuit and other circuits demonstrate that the government need not put forth direct evidence that the defendant knew that the proceeds derived from "specified unlawful activity." Instead, the government may put forth circumstantial evidence and the jury is permitted to infer that the defendant had knowledge that the proceeds emanated from an unlawful activity. See United States v. Montague, 29 F.3d 317, 321-22 (7th Cir. 1994) (affirming conviction for money laundering, the Seventh Circuit rejected the defendant's contention that she did not know that the proceeds were from illegal activities and held that there was sufficient evidence for the jury to infer that "the defendant knew that the property involved in [the] financial transaction represented proceeds from some form of unlawful activity"); United States v. Kaufmann, 985 F.2d 884, 893-94

(7th Cir. 1993) (affirming conviction for attempted money laundering, the court held that although the defendant contended he believed the proceeds were assets being hidden from divorce proceedings, there was sufficient evidence for the jury to find the defendant had knowledge that the money came from drug proceeds); United States v. Brown, 944 F.2d 1377, 1387-88 (7th Cir. 1991) (affirming conviction for money laundering, the Seventh Circuit held that “[i]t was certainly permissible for the jury to rely on [] circumstantial evidence to find that [the defendant] knew where the money was coming from and, with that knowledge, both assisted [the co-defendants] in laundering the proceeds through a nearly-bankrupt mortgage company and lied about his involvement in the scheme because he knew of the illegal nature of the proceeds”); United States v. Campbell, 977 F.2d 854, 856-58 (4th Cir. 1992) (reversing the district court’s grant of a motion for acquittal on money laundering charges, the Fourth Circuit held that there was sufficient evidence for the jury to decide that the proceeds were derived from drug dealing and that “the government must only show that the defendant possessed the knowledge that the transaction was designed to conceal illegal proceeds”); United States v. Turner, 975 F.2d 490, 496-97 (8th Cir. 1992) (affirming conviction for money laundering, the Eighth Circuit rejected the defendant’s contention that the government failed to prove that the defendant knew the source of the funds was illegal and held that “[a]lthough the government did not directly prove that the money [the defendant] used to pay for the building came from drug sales, it was reasonable for the jury to infer this from the evidence”); United States v. Massac, 867 F.2d 174, 177-78 (3d Cir. 1989) (affirming conviction for money laundering, the Third Circuit held that there was sufficient evidence “to permit the jury to reasonably infer that [the defendant] possessed the required knowledge to justify her conviction”).

Here, Mr. William White, a Co-Defendant who pled guilty, testified that he created a fictitious corporation, Eagle Mailing Services ("Eagle"), and submitted fraudulent invoices to CNA. After receiving checks from CNA, Mr. White deposited the checks in a bank account that he created for Eagle. Mr. White would then write checks on the Eagle account for less than \$10,000, to avoid a currency transaction report being generated, and cash the checks at currency exchanges.

In February of 1996, Mr. White was scheduled to go to state prison on credit card fraud and DUI charges. A month before going to prison, Mr. White began looking for someone to help him cash the CNA checks while he was incarcerated. After two persons rejected his offer to cash the CNA checks while he was in jail, Defendant Cassano, a casual acquaintance of Mr. White, agreed to cash the checks.

Mr. White testified that he and Cassano never discussed whether cashing the checks was illegal. White allegedly told Cassano that the source of the money was a friend, William Reinhardt, the name of which was actually an alias used by Mr. White, and that Mr. Reinhardt wanted to conceal marital assets from his wife in an ongoing divorce proceeding.

In all, Cassano cashed over 50 checks for Mr. White, all for amounts under \$10,000. In return for cashing the checks, Mr. White gave Cassano anywhere from \$100 to \$500 on at least twenty occasions. During Mr. White's incarceration, however, Cassano kept the money from five checks, in the amount of \$42,000, that he cashed for himself. Moreover, the Government alleges that Cassano filled out the date and the amount on the five checks.

Cassano also did not sign his own name on any of the 50 plus checks that he cashed. The signature on the back of the checks was that of Richard Reinhardt. Another witness, Ms. Yolonda Scott testified that Cassano told her that he did not want to sign the back of the checks.

The government asked for and received an “ostrich instruction” for the jury. The ostrich instruction is intended to convey to a jury that deliberate avoidance of knowledge is the equivalent of actual knowledge. United States v. Craig, 178 F.3d 891, 896 (7th Cir.1999). A defendant may not evade criminal responsibility simply by pleading ignorance where he knows or strongly suspects that he is involved in shady dealings, but deliberately avoids taking steps to learn more about the nature or extent of those dealings. United States v. Fauls, 65 F.3d 592, 598 (7th Cir.1995). The instruction is proper when a defendant claims a lack of guilty knowledge and there is evidence to support an inference of deliberate ignorance. Wallace, 212 F.3d at 1004.

After carefully examining the record, this Court finds that, despite Mr. White’s testimony that he told Cassano that the money was from his friend seeking to hide martial assets, the evidence was sufficient to support an inference of either actual knowledge or deliberate ignorance on the part of Defendant Cassano regarding the source of the checks. Therefore, this Court denies Defendant Cassano’s Motion for Acquittal based on the sufficiency of the evidence.

II. Variance

A variance arises when the evidence adduced at trial narrows the scope of the indictment's charges without adding any new offenses. United States v. Remsza, 77 F.3d 1039, 1043 (7th Cir.1996). The Seventh Circuit has repeatedly emphasized that "the jury gets the first crack at deciding 'whether there is one conspiracy or several when the possibility of a variance appears.' "

United States v. Wilson, 134 F.3d 855, 865 (7th Cir.1998). See also United States v. Magana, 118 F.3d 1173, 1186 (7th Cir. 1997), quoting United States v. Percival, 756 F.2d 600, 609 (7th Cir.1985).

Likewise, a constructive amendment occurs when the offense proven at trial was not alleged in the indictment, United States v. Remsza, 77 F.3d 1039, 1043 (7th Cir.1996), and arises where a complex set of facts distinctly different from those alleged in the indictment are presented to the jury, United States v. Kuna, 760 F.2d 813, 817 (7th Cir.1985), or when the facts establish a substantive offense different from that charged in the indictment. Id.

Here, the Superseding Indictment alleges that Defendant Cassano violated 18 U.S.C. §1956(a)(1) by conducting and attempting to conduct “financial transactions affecting interstate commerce, which transactions involved the proceeds of specified unlawful activity, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, source, ownership, and control of the proceeds of said specified unlawful activity.”

As explained above, in charging money laundering, the government need not put forth direct evidence that the defendant knew that the proceeds derived from “specified unlawful activity.” Instead, the government may put forth circumstantial evidence and the jury is permitted to infer that Cassano had knowledge that the proceeds were from an unlawful activity or that Cassano deliberately ignored the fact that the checks were the illegal proceeds. Nothing in the record remotely suggests that the evidence presented at trial constitutes a variance to the indictment because the illegal conduct proven by the government is consistent with the offense charged in the indictment. See United States v. Wilson, 134 F.3d at 855, 865 (7th Cir.1998). Consequently, this Court finds that

the evidence offered at trial was not materially different from that alleged in the indictment, and therefore, the Court denies Defendant Cassano's motion to acquit based on an alleged variance.

CONCLUSION

For the foregoing reasons, Defendant Cassano's Motion for Judgment of Acquittal [198-1] is denied. It is so ordered.

ENTER:

BLANCHE M. MANNING
U.S. DISTRICT COURT JUDGE

DATE:_____